IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2439 OF 2005
IN
APPEAL (LODG) NO. 369 OF 2005
IN
SUIT NO. 1145 OF 1980

1. Modi Vyapar Pratishthan & Anr.] .. Appellants

Versus

Mr. B.C. Meena, Official Liquidator,]
attached to Rajasthan High Court.] .. Respondent

Mr. P.K. Samdani, senior counsel with Mr. Peer Moiddin i/b M/s. Paras Kuhad & Associates for the appellant.

Ms. Amitha Poojari i/b Dhru & Co. for the respondent.

CORAM: R.M. LODHA &
S.A. BOBDE, JJ.

DATED: 06TH NOVEMBER, 2006

P.C. :

. Heard.

2. On September 26, 2006, we passed the following order:

> "1. At the time of consideration of the Notice of Motion, we wanted to know from the counsel for the appellants-applicants as to whether in exercise of its powers under section 446(3) of the Companies Act in the winding up petition, the Rajasthan High Court could have ordered transfer of the

proceedings and papers in Suit No.1145 of 1980 pending before this Court to the Rajasthan High Court. For consideration of this issue, we also sought assistance of Messrs S.H. Doctor and D.D. Madon, senior counsel. According to them, the expression "any other Court" in section 446 includes the High Court. Our attention was invited to the judgement of the Madras High Court in the case of Cotton Corpn. of India Ltd. v. Radhakrishna Mills Ltd. [(1993) 76 Company Cases 637] and the judgement of the Punjab and Haryana High Court in the case of State of J & K v. Hindustan Forests Co. [(1997) 88 Company Cases 21].

2. Nothing contrary has been shown by the counsel for the Official Liquidator. Prima facie, therefore, it seems to us that the record and papers of Suit No.1145 of 1980 could have been called for by the Rajasthan High Court under section 446(3) of the Companies Act in the winding up petition.

3. However, the Advocate for the Official Liquidator submits that long delay of more than six years is not sufficiently explained and that the Official Liquidator shall file affidavit-in-reply in opposition to the Notice of Motion within four weeks from today.

. Stand over for four weeks."

3. Today, the Advocate for the Official Liquidator attached to the Rajasthan High Court (Liquidator of Jaipur Spinning & Weaving Mills Limited) submits that no reply Affidavit could be filed in opposition to the Notice of Motion since no instructions were received from the Official Liquidator.

4. We perused the Affidavit in support of the

Notice of Motion. It transpires therefrom that on 2nd December, 1983 the Rajasthan High Court ordered the winding up of Jaipur Spinning & Weaving Mills Ltd. (JSWM) and Official Liquidator was appointed in respect of the same. On 1st December, 1993 the Official Liquidator attached to the Rajasthan High Court took out Chamber Summons in Suit No.1145 of 1980 pending before this Court for his substitution in place of JSWM. The said Chamber Summons was made absolute. Thereafter, on 13th January, 1994 the application was made by the Official Liquidator attached to the Rajasthan High Court under Section 446(3) of the Companies Act for an order of transfer of the Suit No.1145 of 1980 from this Court to the Rajasthan High Court. The Rajasthan High Court on 23rd December, 1994 directed the transfer of the suit and proceedings No.1145 of 1980 from this Court to itself. It is stated that in view of the said order, the Advocate on record representing the appellants did not follow the proceedings in this Court. On 2nd March, 2005 the applicant received the communication from the Advocate for the respondent for settlement in the light of the order passed on 19th November, 1999. It is stated that the applicant was not aware that proceedings in the suit continued despite the transfer of the suit to the Rajasthan High Court. It is stated that the applicant came to know of the disposal of the suit only

on receipt of the communication dated 2nd March, 2005 and thereafter the steps were taken in filing the Appeal challenging the judgment and order dated 19th November, 1999 and this Notice of Motion has been taken out for condonation of delay.

5. Though the delay is of more than six years, we are satisfied that in view of the facts stated in the Affidavit in support and the fact that the said facts remain untraversed for want of any reply Affidavit, the long delay in filing the Appeal has been sufficiently explained.

6. We, accordingly, condone the delay in filing the Appeal.

7. Office is directed to process the Appeal and post it for admission as soon as it is numbered.

. Notice of Motion stands disposed of.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]